Sarawak Bank Employees' Union v Standard Chartered Bank (M) Bhd

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO Q-02–60 OF 2010

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RAUS SHARIF PCA, RAMLY ALI AND ALIZATUL KHAIR JJCA
28 MAY 2012

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Labour Law — Industrial Court — Award — High Court affirmed decision of Industrial Court ('IC') — Appellate interference — Whether there was reason to interfere with findings of IC and High Court — Whether claimants were entitled to service team leader's allowance (STL allowance) after they ceased to be service team leaders — Whether IC had committed serious error of law by not interpreting and adjudicating on article 36 of collective agreement — Whether IC had jurisdiction or authority to deal with interpretation of article 36 — Industrial Relations Act 1967 ss 26(2) & 33

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The appellant, the Sarawak Bank Employees' Union, represents all clerical and non-executive employees of banks in Sarawak, while the claimants were at all material times clerical employees of the respondent bank who were members of the appellant's union. The subject matter of the present case concerned the service team leader's allowance ('STL allowance'), which the two claimants were receiving from the respondent bank. The first claimant a special grade clerk in the respondent bank was paid an STL allowance of RM200 per month, which was later increased to RM250, when she was appointed as a special team leader (STL). Later, when the first claimant became a service representative and ceased to be an STL, the respondent bank stopped paying her the STL allowance. The second claimant also received the STL allowance upon being appointed an STL. However, the second claimant continued to receive the STL allowance even after he ceased performing the duties of an STL. The first claimant claimed that she was also entitled to receive the STL allowance. The two trade disputes were referred by the Minister of Human Resources to the Industrial Court, under s 26(2) of the Industrial Relations Act 1967 ('the Act'). The appellant contended that the STL allowance should have continued under article 36 of the collective agreement ('the CA') even after both claimants ceased to perform the STL duties. The respondent bank submitted that the STL allowance was only payable to the special grade clerk who had been appointed an STL and ceased when the employee no longer carried out the duties of an STL. The respondent bank referred to a letter of agreement to which the appellant and respondent were parties, which clearly stipulated that the STL allowance would no longer be payable to an employee who no longer carried out the duties of an STL. The Industrial Court ('the IC') held that the respondent bank was entitled to stop paying both claimants the STL allowance

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when they ceased to perform the duties of the STL. The IC also declined to take into consideration article 36 of the CA on the grounds, inter alia, that art 36 was ambiguous and that its interpretation was a matter that ought to have been taken up under s 33 of the Act before all parties to the CA. The appellant applied by way of a judicial review application to the High Court to quash the award of the IC. The High Court dismissed the appellant's judicial review application and hence the present appeal.

Held, dismissing the appeal with costs of RM30,000:

(1) The payment of the STL allowance was purely based on a separate agreement that was to be found vide the respondent bank's letter to the appellant, which was outside the CA. That being the case, the present claims by both claimants on the STL allowance should be determined based on the provisions of that letter of agreement signed by the respondent's industrial manager and the general secretary of the appellant union. This letter clearly stipulated that the STL allowance would no longer be payable to an employee who ceased to perform the duties of an STL. As such, the Industrial Court was correct in arriving at the conclusion that the STL allowance was no longer payable to the two claimants because they had ceased performing the duties of an STL (see paras 21–24 & 26).

(2) The appellant's contention that the Industrial Court had committed a serious error of law by not interpreting and adjudicating on article 36 of the CA had no basis. The reference made by the Minister under s 26 of the Act related to the dispute on the STL allowance, which was governed by a separate agreement. Further, the jurisdiction of the IC was limited to the dispute referred to it. It had no jurisdiction or authority to deal with a matter outside the reference. Thus, the interpretation of article 36 of the CA was clearly outside the terms of reference as referred to by the Minister under s 26 of the Act and the IC chairman was correct in law to decline to deal with this issue. Thus there was no error of law committed by the IC in dismissing the claimants' claim and there was no reason to interfere with the findings of the IC and the High Court (see paras 30–34 & 36).

(3) Under article 4(4) of the CA, the interpretation of article 36 of the CA should be first brought before the Standing Committee to be resolved. Then, if the matter needed to go to court at a later stage, it ought to be by way of a reference under s 33 of the Act and all parties to the agreement, ie the appellant union and the Sarawak Commercial Banks' Association in which the respondent is a member, ought to be made parties to the proceedings (see para 35).

[Bahasa Malaysia summary

Perayu, Kesatuan Pekerja Bank Sarawak, mewakili semua pekerja bank perkeranian dan bukan eksekutif di Sarawak, manakala penuntut-penuntut pada semua masa material merupakan pekerja-pekerja perkeranian bank responden yang merupakan ahli-ahli kesatuan perayu. Perkara subjek kes ini berhubung elaun ketua pasukan perkhidmatan ('elaun KPP'), yang diterima dua penuntut daripada bank responden. Penuntut pertama merupakan kerani gred khas di bank responden yang dibayar elaun KPP sebanyak RM200 setiap bulan, yang kemudiannya dinaikkan kepada RM250, apabila dia dilantik sebagai ketua pasukan khas ('KPP'). Kemudiannya, apabila penuntut pertama menjadi seorang wakil perkhidmatan dan berhenti menjadi KPP, bank responden berhenti membayar elaun KPPnya. Penuntut kedua juga menerima elaun KPP selepas dilantik sebagai KPP. Walau bagaimanapun, penuntut kedua terus menerima elaun KPP meskipun selepas dia berhenti menjalankan tugas sebagai seorang KPP. Penuntut pertama mendakwa bahawa dia juga berhak untuk menerima elaun KPP. Dua pertikaian perdagangan dirujuk oleh Menteri Sumber Manusia kepada Mahkamah Perusahaan, di bawah s 26(2) Akta Perhubungan Perusahaan 1967 ('Akta'). Perayu menghujah bahawa elaun KPP seharusnya terus diberikan di bawah artikel 36 perjanjian bersama ('PB') meskipun selepas kedua-dua penuntut berhenti menjalankan tugas KPP. Bank responden menghujah bahawa elaun KPP hanya dibayar kepada kerani gred khas yang dilantik sebagai seorang KPP dan dihentikan apabila pekerja tersebut tidak lagi menjalankan tugas-tugas sebagai seorang KPP. Bank responden merujuk kepada surat perjanjian di mana perayu dan responden merupakan pihak-pihak, yang secara jelas menyatakan bahawa elaun KPP tidak akan dibayar kepada seorang pekerja yang tidak lagi menjalankan tugas-tugas seorang KPP. Mahkamah Perusahaan ('MP') memutuskan bahawa bank responden berhak untuk berhenti membayar elaun KPP kepada kedua-dua penuntut apabila mereka berhenti menjalankan tugas-tugas KPP. MP juga enggan untuk mempertimbangkan artikel 36 PB atas alasan, antara lainnya, bahawa artikel 36 adalah kabur dan bahawa tafsirannya merupakan perkara yang perlu dilakukan di bawah s 33 Akta sebelum kesemua pihak merujuk kepada PB. Perayu memohon melalui permohonan semakan kehakiman kepada Mahkamah Tinggi untuk membatalkan award MP. Mahkamah Tinggi menolak permohonan semakan kehakiman perayu dan oleh itu rayuan ini dibuat.

Diputuskan, menolak rayuan dengan kos RM30,000:

(1) Bayaran elaun KPP adalah pada asasnya berdasarkan perjanjian berasingan yang boleh didapati melalui surat bank responden kepada perayu, di luar PB. Oleh itu, tuntutan-tuntutan ini oleh kedua-dua penuntut perlu ditentukan berdasarkan peruntukan-peruntukan surat perjanjian yang ditandatangani oleh pengurus perusahaan responden dan setiausaha agung kesatuan perayu. Surat ini jelas menyatakan

bahawa elaun KPP tidak akan dibayar kepada seorang pekerja yang berhenti menjalankan tugas sebagai seorang KPP. Oleh itu, Mahkamah Perusahaan membuat kesimpulan tepat bahawa elaun KPP tidak perlu dibayar kepada kedua-dua penuntut kerana mereka telah berhenti menjalankan tugas-tugas sebagai KPP (lihat perenggan 21–24, 26).

(2) Hujahan perayu bahawa Mahkamah Perusahaan telah melakukan kesilapan serius dari segi undang-undang dengan tidak mentafsirkan dan menghakimi berdasarkan artikel 36 adalah tidak berasas. Rujukan dibuat oleh Menteri di bawah s 26 Akta berhubung pertikaian elaun KPP, tertakluk oleh perjanjian berasingan. Seterusnya, bidang kuasa MP terhad kepada pertikaian yang dirujuk kepadanya. MP tidak mempunyai bidang kuasa atau kuasa untuk mengendalikan perkara di luar rujukan. Oleh itu, tafsiran artikel 36 PB secara jelas berada di luar terma-terma rujukan seperti yang dirujuk oleh Menteri di bawah s 26 Akta dan Pengerusi MP adalah benar di sisi undang-undang untuk enggan mengendalikan isu ini. Oleh itu, tiada kesilapan di sisi undang-undang yang dilakukan oleh MP dalam menolak tuntutan penuntut dan tiada alasan untuk campur tangan dengan dapatan-dapatan MP dan Mahkamah Tinggi (lihat perenggan 30–34, 36).

(3) Di bawah artikel 4(4) PB, tafsiran artikel 36 PB seharusnya dikemukakan terlebih dahulu di hadapan Jawatankuasa Tetap untuk diselesaikan. Kemudiannya, sekiranya perkara ini perlu dikemukakan ke mahkamah pada peringkat seterusnya, ia seharusnya dikemukakan melalui rujukan di bawah s 33 Akta dan semua pihak-pihak kepada perjanjian iaitu kesatuan perayu dan Persatuan Bank Komersial Sarawak di mana responden merupakan ahli, seharusnya dijadikan pihak-pihak kepada prosiding-prosiding (lihat perenggan 35).]

Notes

For cases on award, see 8(1) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 1556–1625.

Cases referred to

All Malayan Estates Staff Union v Golden Hope Plantation Bhd & Anor [1994] 2 MLJ 699, HC (refd)

Hochtief Gammon v Industrial Tribunal AIR 1964 SC 1746, SC (refd)

Wong Yuen Hock v Syarikat Hong Leong Assurance Sdn Bhd and another appeal [1995] 2 MLJ 753; [1995] 3 CLJ 344, FC (refd)

Legislation referred to

Industrial Relations Act 1967 ss 26, 26(2), 33

Appeal from: Judicial Review No JR–06 of 2008–III

Satinder Singh Sandhu (Kalveet Singh Sandhu with him) (Sandhu & Co Advocates) for the appellant.
Sivabalah (Reddi & Co & Advocates) for the respondent.

Ramly Ali JCA (delivering judgment of the court):

INTRODUCTION

[1] The appellant in the present appeal is the Sarawak Bank Employees Union and the respondent is the Standard Chartered Bank (M) Bhd. The present appeal is against the decision of the learned judicial commissioner of the High Court in dismissing the appellant's judicial review application to quash the award made by the Industrial Court vide Award No 1322 of 2008 which was handed down on 29 July 2008.

[2] The appeal originated from a trade dispute between the appellant and the respondent upon a reference made by the Minister under s 26 of the Industrial Relations Act 1967 ('the Act'). The reference was in respect of two trade disputes which concerned the payment of a service team leader ('STL') allowance to two bank employees namely Miss Lily Yap ('the first claimant') and Mr Yii Ching Ming ('the second claimant'), both were members of the appellant's union.

FACTUAL BACKGROUND

[3] Both the claimants, at the material times were clerical employees of the respondent bank. The first claimant, Miss Yap joined the bank in 1982 as a clerk. She was promoted as a special grade clerk on 15 June 1995. At the same time she was appointed as a special team leader (STL). As a STL she was paid the STL allowance of RM200 per month which was later increased to RM250. On 1 February 2003, she was appointed as service representative II (special grade) and she ceased to perform the STL duties. The respondent bank then stopped paying her the STL allowance. She did not complain until she discovered that the second claimant (Mr Yii) received, and was still being paid his STL allowance after ceasing to perform the STL duties.

[4] The second claimant joined the respondent bank in June 1983. He received the STL allowance upon being appointed as STL on 1 April 1993. In January 2002 he ceased performing the STL duties upon being appointed mortgage sales representative of the respondent bank. However, unlike the case of Miss Yap, he continued to receive the STL allowance until a time when he

was transferred to the Miri Branch as a customer sales representative in 2003. When the union (the appellant) took up the matter with the respondent bank, his STL allowance was temporarily restored. The respondent bank finally stopped payment of the STL allowance to the second claimant in 2005 when the appellant raised the complaint of the first claimant (Miss Yap) regarding the same issue.

[5] The dispute was not resolved. Upon reference by the Minister under s 26 of the Act, the Industrial Court consolidated both the disputes and held a joint trial.

THE STL ALLOWANCE

[6] The subject matter of the present appeal concerns the service team leader's allowance or in short, the STL allowance. The STL allowance of RM200 per month (later increased to RM250 per month) was created by the respondent bank (after negotiations and discussions with the appellant) since 1 June 1993, payable to its employees who had been appointed to assume the post of service team leaders.

[7] The STL allowance is not provided for in the collective agreement entered into between the appellant (representing the banks' employees) and the Sarawak Commercial Banks' Association ('SCBA'). The respondent bank is a member of SCBA. The said collective agreement only covers three categories of employees, namely — the non-clerical, general clerical and special grade clerical. It does not cover employees performing the posts of service team leaders (STL).

[8] Therefore the payment of the STL allowance is purely based on a separate agreement, outside the collective agreement. Among the terms agreed (as found in a letter written by the respondent bank on 19 October 1994 to the appellant, which was agreed by the appellant), are as follows:

(a) the allowance payable is for a sum of RM200 per month (which was later increased to RM250 per month) effective from their date of appointment with 1 June 1993 as the cut-off point;

(b) special grade clerks who perform the duties of the service team leaders are eligible to be paid the said allowance;

(c) special grade clerks who are not appointed as a STL would not be eligible for the allowance; and

(d) the STL who are taken out of the scope of duties assigned to him and reverted to doing duties of the special grade clerks will relinquish the said allowance.

[9] From the letters exchanged between the parties and the letter of agreement as well as the evidence of the witnesses during the hearing, it is clear that the STL allowance was solely for remunerating employees who were required to perform additional duties of the STL job and was not intended to; nor did it create a new grade under the existing collective agreement. It is only a temporary allowance that can be withdrawn if the special grade clerk ceases to perform such STL duties. Even the former president of the appellant union (between 1994–1997), Mr Joseph Chua Teng Hong agreed during cross-examination that the STL allowance is not payable if the employee is no longer performing the duties of the STL.

CONTENTIONS OF THE APPELLANT/CLAIMANTS

[10] The appellant contended that the Industrial Court in dealing with the claimants' claim must have regard to all the relevant provisions of the collective agreement, particularly article 36 thereof. It was the appellant's case that article 36 of the collective agreement was relevant in the determination of the issue as to whether or not the respondent bank could remove or withdraw the STL allowance when the employee concerned (the claimants) ceased to perform the duties of the service team leaders (STL), which was the main issue for determination before the Industrial Court.

[11] The appellant further contended that by virtue of the said article 36 of the collective agreement, the respondent bank could not remove or withdraw the said STL allowance even when the employees concerned (the first and second claimants) ceased to perform the duties of the service team leaders. The appellant argued that the STL allowance was a benefit which was paid monthly in cash to the claimants under the collective agreement and it fell within the ambit of article 36, being 'the existing benefits given currently received daily or monthly in cash or kind which are not covered under the present terms of the collective agreement'. To the appellant the STL allowance should have continued under article 36 of the collective agreement, even after both of the claimants ceased to perform the STL duties.

[12] The appellant submitted before us that the Industrial Court had committed a serious error of law in excluding the provisions of article 36 of the collective agreement from the consideration in the determination of the trade disputes between the appellant and the respondent bank on the basis that the said article 36 is ambiguous and self-contradictory. The appellant also submitted that the High Court had misdirected itself in law in finding that the Industrial Court was right in taking the above approach and in upholding the decision of the Industrial Court.

A CONTENTIONS OF THE RESPONDENT BANK

[13] The respondent bank on the other hand contended that the intention of the parties in relation to the STL allowance is clear ie the STL allowance was only payable to the special grade clerk who have been appointed to assume the B duties of the service team leader (STL) and ceases when the employee no longer carries out the STL duties, as clearly stipulated in their letter dated 19 October 1994 (which was agreed to by the appellant).

[14] The respondent bank was of the view that article 36 of the collective C agreement is not applicable to the present disputes between the claimants and the respondent bank. To the respondent bank, the said STL allowance does not amount to 'an existing benefit' within the context of article 36; and the said article 36 is to cater for instances where there are no specific terms governing the payment of the allowance unlike the present case, where the said STL D allowance was specifically provided for in a separate agreement on the terms agreed upon between the parties concerned based on the letter dated 19 October 1994, which was clearly outside the collective agreement.

E DECISION OF THE INDUSTRIAL COURT

[15] The Industrial Court decided in favour of the respondent bank and held that the respondent bank can remove or withdraw, the STL allowance; and is entitled to stop paying both the claimants the STL allowance when they ceased F to perform the duties of the service team leaders. The Industrial Court dismissed the claim made by the two claimants.

[16] In determining the present trade disputes, the Industrial Court declined to take into consideration and to interprete article 36 of the collective G agreement on the grounds, inter alia, that the said article 36 is ambiguous and self-contradictory; its interpretation is a matter which ought to have been taken up under s 33 of the Act and all parties or signatories to the collective agreement (including the Sarawak Commercial Bank Association — SCBA) should be before the court.

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[17] The Industrial Court further held that it cannot render an interpretation of the collective agreement when the SCBA (one of the signatories) has not been brought in as a party. On that ground the Industrial Court refused to entertain such method as adopted by the appellant in the I present case.

DECISION OF THE HIGH COURT

[18] At the High Court, on a judicial review application by the appellant, the

learned judge dismissed the said application to quash the award of the Industrial Court for reason that it is not a fit case to quash the award because the court was satisfied that the Industrial Court had not committed any error of law in deciding that the two claimants were not entitled to the STL allowance the moment they ceased to perform the duties of the service team leaders with the respondent bank.

[19] The learned High Court judge had also reviewed article 36 of the collective agreement and concluded that whilst the first limb of the article provides that the allowances paid for the performance of a specific task shall cease to be paid if the tasks are no longer performed, the second limb appears to give permanency to the said benefits. The learned judge similarly concluded that s 33 of the Act would be the appropriate procedure or mechanism to be adopted as the said s 33 envisages that any ambiguity in an award of the Industrial Court or a collective agreement should be resolved by way of a specific reference to the High Court for a decision on the matter, where all the parties (including the SCBA) must be before the court.

[20] The learned High Court judge also held that article 36 of the collective agreement, as it stood at the material time, was ambiguous and self-contradictory, as found by the Industrial Court; and, therefore the said article 36 did not support the assertion of the appellant that the STL allowance was still payable to the claimants even if they are no longer performing the duties of the service team leaders. The learned judge agreed with the Industrial Court that due to the ambiguity of its meaning, the Industrial Court declined to interprete the said article 36 and proceeded to determine the disputes on the evidence that the parties had agreed that the STL allowance would be paid only during the period when the claimants, as special grade clerks, perform the duties of the service team leaders. The learned judge found that the Industrial Court did not commit any error of law and accordingly dismissed the appellant's application for judicial review to quash the award made by the Industrial Court.

OUR FINDINGS

[21] The subject matter of the claimants' claim in the present case is the service team leader's allowance or the STL allowance. It is a type of allowance specifically agreed between the appellant (as the union representing the claimants as employees of the respondent bank) and the respondent bank (the Standard Chartered Bank (M) Bhd). The agreement is to be found vide the respondent bank's letter to the appellant dated 19 October 1994 and the confirmation of the appellant in its letter of the same date. The parties to this agreement are the appellant and the respondent bank. It is not part of the collective agreement entered into between the appellant (representing the bank

employees) and the Sarawak Commercial Banks' Association (SCBA) (representing the commercial banks in Sarawak) where the respondent bank is a member.

[22] That being the case, the present claims by both the claimants on the STL allowance must be determined based on the provisions of the said letter of agreement dated 19 October 1994. This letter was signed by one Ahmad Ghuzal Tahir, industrial relation manager of the respondent bank and Andrew Lo, general secretary of the appellant union. The relevant part of the said letter is as follows:

Service Team Leaders Allowance

As agreed in our meeting on Wednesday, 19 October 1994, we confirm the following:

i STLs who have been appointed to assume such posts will be paid a monthly STL Allowance of RM200 per month effective the date of their appointment with 1 June 1993 as the cut-off point. Thus, for the purpose of payment of payment of arrears, those STLs who are appointed before 1 June 1993, will have their arrears computed with effect from 1 Jun 1993.

ii Special Grade clerks who are not appointed as STL will not be eligible for this allowance.

iii STLs who are taken out of the scope of duties assigned to STL and reverted to doing duties of the special grade clerk will relinquish this allowance.

[23] The issue as to whether both the claimants were special grade clerks who have ceased to perform the duties of the service team leaders (STL) and still be entitled to be paid the STL allowance by the respondent bank is clearly stipulated in the said agreement, ie that the 'STLs who are taken out of the scope of duties assigned to STL and reverted to doing duties of the Special Grade clerk will relinquish this allowance'.

[24] By a letter dated 20 January 2003, the respondent bank advised the appellant that the STL allowance was increased to RM250 per month with effect from 1 January 2003. In the same letter, the respondent bank also reiterated that: 'The STL allowance is payable to any staff assigned the STL function and ceases when the staff no longer carries out STL functions.'

[25] Even the former president of the appellant union Mr Joseph Chua Teng Hong (who was in office for the period of 1994–1997) agreed during cross-examination that the STL allowance is not payable if the employee is no longer performing the duties of the STL.

[26] The Industrial Court was correct in arriving at its conclusion that the STL allowance was no longer payable to the two claimants in the light that they had ceased performing the STL duties and functions based on the oral and documentary evidence adduced before the court.

[27] Learned counsel for the appellant submitted that the respondent bank cannot remove or withdraw the STL allowance from both the claimants on the strength of article 36 of the collective agreement, signed by the appellant (representing the employees) and SCBA (representing the banks where the respondent bank is one of its members). Learned counsel for the appellant further submitted that it was imperative for the Industrial Court to interprete and adjudicates on article 36 in determining the present trade disputes; and by failing to do so; the Industrial Court had committed a serious error of law, by not taking into consideration a relevant matter.

[28] Article 36 of the collective agreement reads as follows:

> 1 The bank shall not remove any existing benefits given currently received daily or monthly in cash or kind by their employees which are not covered under the present terms of this Collective Agreement except that:
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> (a) Benefits given in kind for a specific reason, as and when such reason ceases to exist, shall stop being given; and
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> (b) Allowance paid for the doing of a specific task, as and when such task ceases to be performed by the employees or classes of employees concerned, shall cease to be paid;
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> 2 Employees who are in receipt of any benefits originally granted to them daily or monthly in cash or kind for a doing of a specific task which is no longer performed by the employees concerned or for a specific reason which has ceased to exist will continue to receive the said benefits. Such benefits received shall henceforth be treated as personal benefits applicable only to the employees concerned and shall cease when the holder leaves office.

[29] Learned counsel for the respondent bank argued that the Industrial Court cannot interpret the terms of the collective agreement in the present case as that will come under s 33 of the Act which provides:

> (1) If any question arises as to the interpretation of any award or collective agreement taken cognizance of by the court, the Minister may refer the question, or any party bound by the award or agreement may apply, to the court for a decision on the question.

[30] As stated earlier, the reference made by the Minister under s 26 of the Act relates to the dispute on the STL allowance which was governed by a

separate agreement dated 19 October 1994 between the appellant (representing the employees) and the respondent bank, but not under any provision of the collective agreement involving the appellant and SCBA.

[31] On this issue, we are of the view that the jurisdiction of the Industrial Court is limited to the dispute referred to it. It has no jurisdiction or authority whatsoever to deal with a matter outside the reference. It is the reference that determines the jurisdiction of the Industrial Court. The Industrial Court cannot go beyond the subject matter referred to it (see *All Malayan Estates Staff Union v Golden Hope Plantation Bhd & Anor* [1994] 2 MLJ 699 — per Wan Adnan J (as he then was)).

[32] In the celebrated case of *Hochtief Gammon v Industrial Tribunal* AIR 1964 SC 1746, the Indian Supreme Court in dealing with the same issue held that 'it is well settled that the terms of reference determine the scope of its power and jurisdiction from case to case'. (see also *Wong Yuen Hock v Syarikat Hong Leong Assurance Sdn Bhd and another appeal* [1995] 2 MLJ 753; [1995] 3 CLJ 344).

[33] In the present case, the issue on the interpretation of article 36 of the collective agreement as introduced by the appellant is clearly outside the terms of reference as referred to by the Minister under s 26 of the Act 1967.

[34] The learned Industrial Court chairman was correct in law when he declined to deal with the interpretation and determination on article 36 of the collective agreement as requested by the appellant's counsel. The implementation or interpretation of any provisions, of the collective agreement in question is governed by article 4(4) of the said collective agreement, which reads:

> (4) Implementation and/or Interpretation of Collective Agreement–
>
> (a) A Standing Committee consisting of not more than five (5) members each from the Association and the Union shall be established. All questions and disputes connected with the implementation and/or interpretation of this Collective Agreement shall be dealt with by the Standing Committee. If it is still not resolved, the dispute shall be referred to the Industrial Court for a decision.
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> (b) The SCBA/SBEU Standing Committee is the only body to deal with all questions and disputes connected with the implementation and/or interpretation of the Articles in this Collective Agreement. Any doubts relating to the implementation and/or interpretation of any Articles in the Agreement shall therefore be referred to the Standing Committee.

[35] The appellant as a signatory to the collective agreement must follow the

mechanism for interpretation of any provisions of the collective agreement including article 36. Such interpretation cannot be done by the Industrial Court unless such dispute cannot be resolved by the Standing Committee. The provisions of article 4(4) of the collective agreement must be followed. The matter must first be brought before the Standing Committee as stipulated therein, as it was agreed that 'the SCBA/SBEU Standing Committee is the only body to deal with all questions and disputes connected with the implementation and/or interpretation of the articles in the collective agreement'. If at all the matter needs to go to court at a later stage, it must be done by way of a reference under s 33 of the Act, in which case, all parties to the collateral agreement, ie the appellant union and SCBA must be made parties to the proceedings.

CONCLUSION

[36] Based on the above considerations we are satisfied the learned Industrial Court chairman had not committed any error of law in coming to his decision to dismiss the claim by both the claimants on the STL allowance. He has taken into consideration all the relevant evidence; and, had excluded all irrelevant considerations. We are also satisfied that the learned High Court judge had correctly affirmed the decision of the learned Industrial Court chairman. We therefore find no reason to interfere with those findings.

[37] In the premise, we dismiss the appeal with costs of RM30,000 (here and below) to the respondent; and the deposit be paid to the respondent on account of costs.

Appeal dismissed with costs of RM30,000.

Reported by Kohila Nesan